

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1205 of 1982

with

CIVIL REVISION APPLICATION No 1714 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1-5 No

HEIR OF AHMEDBHAI G GHADIALI MOHMED BILAL A. GHADIYALI

Versus

HIRALAL L GHEEWALA

Appearance:

1. Civil Revision Application No. 1205 of 1982
MR SN SHELAT for Petitioner
MS VASUBEN P SHAH for Respondent No. 1
NOTICE SERVED for Respondent No. 2
2. Civil Revision Application No 1714 of 1982
MS VASUBEN P SHAH for Petitioner
MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/09/98

ORAL JUDGEMENT

Both these revision applications arise out of the judgement dated 30.1.1982 passed by the Assistant Judge, Surat in Civil Regular Appeal No. 196 of 1980. The petitioner Mohmed Bilal Ahmadmiya Ghadiyali filed suit in the court of Small Causes Court, Surat, seeking declaration that he is the tenant of the suit premises in view of the provision of Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (hereinafter referred to as 'the Bombay Rent Act'). The say of the plaintiff is that he was the tenant in the suit premises being the grandson of deceased Gorumiya Suleman who died in the year 1961. As he was residing along with his grandfather in the suit premises at the time of his death, he inherited the tenancy right. The further say of the plaintiff is that his father went out of the suit premises. However he continued in the premises. The defendant landlord filed a written statement and denied the plaint allegations. The defendant landlord denied that Gorumiya Suleman was the tenant of the suit premises and also denied that the present plaintiff was residing there as a member of the family of the deceased Gorumiya Suleman. It was also denied that Gorumiya Suleman, grandfather of the plaintiff, died in the suit premises in the year 1961. According to the defendant Gorumiya was residing in his own property situated in Sindhiwad in Surat and Ahmedmiya, father of the present plaintiff was tenant of the suit premises and at present the plaintiff was residing with the father Ahmedmiya in the suit premises. It was further stated that Ahmedmiya was still living and he has already surrendered tenancy rights with respect to the suit premises. In view of this the plaintiff has not acquired tenancy rights in respect of the suit premises by virtue of Section 5(11)(c) of the Bombay Rent Act. On appreciation of evidence both the courts below found that the tenancy has not transmitted to the plaintiff. In view of this, the trial court dismissed the suit which has been upheld by the appellate court. The finding arrived at by the lower court does not call for any interference by this court.

The first appellate court while holding the plaintiff is not entitled to declaration has granted injunction restraining the defendant from dispossessing the plaintiff by use of force. It is contended by Mr. Nagarkar, learned counsel that the said injunction is wholly without jurisdiction inasmuch as once the plaintiff has failed to establish that he is a tenant in the premises it is not open for the court to grant such

an injunction. At this stage a preliminary objection has been raised by Ms. Rupaben R. Patel that this contention cannot be entertained for the reason that it would be beyond the scope of revision. It is also submitted that simply because such an injunction has been granted it cannot be said that the court below has committed an error.

I have considered the rival contention. In my view once the plaintiff has failed to show that he is a tenant in the premises as the same has not been transmitted in accordance with the provisions of the Bombay Rent Act he is not entitled to injunction not to dispossess him. The trial court has definitely exceeded its jurisdiction in granting such injunction. However, he cannot be dispossessed except in accordance with law.

In view of the aforesaid, the revision application No. 1714 of 1982 is partly allowed and the injunction in favour of the plaintiff restraining the defendant from dispossessing by use of force is quashed and set aside. However, a direction is given that the plaintiff shall not be dispossessed except in accordance with law. So far as the revision application No. 1205 of 1982 is concerned, I find no merit in this application and the same is rejected. Rule discharged.

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